

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4794 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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DHIRAJLAL B PATEL

Versus

STATE OF GUJARAT & ANR.

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Appearance:

MR MEHUL SHAH for the Petitioner

MR NIGAM SHUKLA for the Respondents.

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CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 06/09/96

C.A.V. JUDGEMENT

1. The petitioner has been appointed under the order dated 9-8-1974 on the post of Demonstrator, Botanical Garden Division, of the Government Ayurvedic Pharmacy College at Rajpipla. The appointment of the petitioner has been made as per the rules of the respondent no.1 named as Demonstrator (Government Ayurvedic Pharmacy College) Recruitment Rules, 1974.
2. The petitioner has come up with a case that the appointment of the petitioner is on a teaching post of

the Government Ayurvedic College and since the date of his appointment he is attending his duties of teaching in the Government Ayurvedic College and he has been assigned various classes of the said college at Rajpipla for teaching since the date of his appointment. The respondent no.1 issued a resolution dated 5th October, 1981 upgrading the teaching post under the Government Ayurvedic College in the Ayurvedic Department. In the list of those upgraded posts, the post of Demonstrator has been mentioned and the payscale of the same has been fixed from Rs.425-700 to Rs.650-1200. The petitioner claims the benefit of the upgradation of the post of Demonstrator, but he was not given the benefits of the said resolution by the respondents on the ground that the post which he holds is a nonteaching post. This refusal to give the benefit of the upgradation to the petitioner gave rise to him for filing of this Special Civil Application.

3. The respondents have filed the reply to this Special Civil Application and have come up with a case that the petitioner was appointed on the post of Demonstrator though in the Government Ayurvedic Pharmacy College, but his post was a nonteaching post. He was a Demonstrator in the Botanical Garden Division. It has further been stated by the respondents that the Government Ayurvedic Pharmacy College of Rajpipla is closed with effect from 30th June, 1980. The respondents have further come up with a case that as the petitioner was not holding the teaching post, he was not entitled for the benefits of the resolution dated 5th October, 1981.

4. The learned counsel for the petitioner contended that the post which the petitioner was holding was a teaching post and as such, it also stands upgraded under the resolution dated 5th October, 1981. The respondents by not extending the benefit of the said resolution to the petitioner have made a hostile discrimination. By making reference to certain documents filed by the petitioner, the counsel for the petitioner contended that the petitioner was doing the teaching work at the College. However, the learned counsel for the petitioner does not dispute that the post of Demonstrator on which the petitioner was appointed at the Ayurvedic College was in the Botanical division.

5. On the other hand, the learned counsel for the respondents contended that it is not the teaching post, and as such, the resolution dated 5th October, 1981 is not applicable to the case of the petitioner. The

respondents have not disputed the fact that the petitioner was recruited under the Recruitment Rules of the Demonstrator of the Government Ayurvedic Pharmacy College, but he was appointed in the Botanical Garden Division. The respondents have come up with a case that a separate unit has been created of Botanical Garden under the Government resolution dated 24th October, 1966 and it was simply attached with the College for the purpose of controlling and administration. It has further been stated that the posts of teaching staff of the said college was sanctioned by separate Government Resolution and were separately continued till the college is closed. In view of this fact, the counsel for the respondents contended that it is not true that the appointment of the petitioner was on a teaching post at the College.

6. The learned counsel for the petitioner has not filed any rejoinder to the reply filed by the respondents.

7. I have given my thoughtful consideration to the submissions made by learned counsel for the parties. Annexure 'B' is a certificate which has been issued by the Principal, Government Ayurvedic Pharmacy College, Rajpipla and the English version thereof filed by the petitioner is extracted below.

This is to certify that Shri D.B. Patel has discharged his duties as Demonstrator in Botanical Garden of this college from date 19-8-1974. He has taught subject of "Yantrashastra" for the period between date 1-7-75 to date 2-8-79 and now demonstrates Green Vegetation (Plantation) to the students of Second Year of B.Pharm. (Course) from date 3-8-79 very efficiently.

This is the only evidence produced by the petitioner to show and establish that he was doing the teaching work. The insistence, by showing this certificate, of the counsel for the petitioner is that the post of Demonstrator though may be in the Botanical Garden Division, but it is treated to be a teaching post. This certificate is in two parts. In first part, it is certified that the petitioner discharged his duties as Demonstrator in Botanical Garden Division of the college from 19-8-74. The second part is more important wherein it has been stated that he taught the subject of "Yantrashastra" for the period between date 1-7-75 to 2-8-79 and now demonstrates the Green Vegetation (Plantation) to the students of second year B.Pharm

Course from 3-8-79. The dissection of this certificate gives out that for the period from 1-7-75 to 2-8-79, the petitioner taught the subject of Yantrashastra to the students. There is no certificate of teaching of the subject by the petitioner earlier to 1-7-75 and after 2-8-79. No other material has been produced on record that the post of Demonstrator which he was holding was a teaching post. From this certificate one can only infer that for some time the Principal has taken the work of teaching from the petitioner, but merely the petitioner taught the subject for a short duration this post will not convert in a post of teaching. The Principal has not certified nor the petitioner has produced any other document to show that the Demonstrator of Botanical Garden Division was a teaching post, created as a teaching post for teaching work in the college. This certificate produced by the petitioner is of little help to him to support his contention. From this document it cannot be accepted that the post of Demonstrator on which the petitioner was appointed is a teaching post.

8. Under the resolution dated 5th October, 1981 the Government upgraded the specific categories of the teaching post and not all other posts may have same name. If we go by nomenclature then the post of Demonstrator is there in the aforesaid resolution, but merely by that fact alone, the petitioner will not become entitled for upgradation or the higher pay scale. To become entitled for the benefits that has been conferred under the resolution dated 5th October, 1981, the petitioner has to establish this fact that the post on which he was appointed and is holding is a teaching post in the Government Ayurvedic College. The burden heavily lies on the petitioner to establish that the post of demonstrator on which he was appointed is a teaching post in Government Ayurvedic College which in the present case he has utterly failed to establish.

9. It is not the case of the petitioner in the writ petition that in Ayurvedic Colleges of the state of Gujarat there is no teaching post of Demonstrator. In the absence of that pleading, it is clear that in the Ayurvedic college of Government of Gujarat there are non-teaching posts of Demonstrator. In the Ayurvedic colleges of Government of Gujarat, there are two type of employees i.e. teaching and nonteaching. The post of demonstrator may not be a nonteaching post also. Both teaching and nonteaching posts are separately created in Ayurvedic college. The respondents have come up with a case that under the Government resolution dated 24th October, 1966 a separate independent unit i.e. Botanical

Garden Division was created and it was simply attached with the College for the purpose of controlling and administration. The respondents have further come up with a case that the post of teaching staff of the said college were sanctioned under separate Government resolution. This college has been closed on 30th June, 1982. The petitioner has not produced any document to show that the post of Demonstrator, Botanical Garden has been created as a teaching post. The respondents have further given out that the post of petitioner was in a separate independent unit namely Botanical Garden Unit and as such, it cannot be considered to be a post in Ayurvedic Pharmacy College, Rajpipla much less a teaching post therein. It is only the administration control which has been given of this unit to the College otherwise in case this unit would have been elsewhere than Rajpipla, it would have come under the control of some another officer or office. It is not in dispute that originally the post sanctioned was of vaidya which was converted into the designation of Demonstrator. Merely because at one point of time earlier to the resolution of the Government dated 5th October, 1981 the payscale of post of demonstrator, both of Botanical Garden and the teaching in the Ayurvedic college, the qualifications for recruitment are the same, this post cannot be equated with the post of Demonstrator, teaching post in the Ayurvedic college. The fact that earlier the post of vaidya which was a nonteaching post was created and later it has been designated as Demonstrator, gives out that this post is a nonteaching post.

10 Taking into consideration the totality of the facts of this case, I do not find any substance in the contention of the learned counsel for the petitioner that the post which the petitioner was holding of the Demonstrator at Botanical Garden Division is a teaching post in Ayurvedic College.

11. In the result, this Special Civil Application fails and the same is dismissed. Rule discharged. No costs.